

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ARTHUR JOHNSON, JR.,

Petitioner,

Civil No. 04-CV-73777-DT

HONORABLE PATRICK J. DUGGAN

v.

WILLIE O. SMITH,

Respondent,

_____ /

**OPINION AND ORDER (1) DENYING PETITIONER'S MOTION FOR RELIEF
FROM ORDER TRANSFERRING CASE TO THE COURT OF APPEALS;
(2) DENYING WITHOUT PREJUDICE PETITIONER'S APPLICATION FOR
RELEASE ON BAIL IN HABEAS CORPUS PROCEEDINGS; AND (3) DENYING
WITHOUT PREJUDICE NOTICE OF ORDER FOR ENTIRE RECORD
REQUESTING CORRECTIONS AND MODIFICATION OF THE RECORDS
FOR APPEALING**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on August 30, 2005.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Petitioner Arthur Johnson, Jr. ("Petitioner"), a state prisoner currently incarcerated at the Oaks Correctional Facility in Eastlake, Michigan, previously filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. On August 4, 2005, this Court issued an order transferring the petition to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 2244(b)(3)(A), as the petition constituted a second or successive application for habeas relief filed by Petitioner. Presently before the Court

is Petitioner's motion for relief from the Court's August 4 order, filed August 22, 2005, in which Petitioner contends that the Court erred in transferring the case and that the order is void. Also before the Court is Petitioner's application for release on bail pending a decision on his petition for habeas relief and a pleading entitled "Notice of Order for Entire Record Requesting Corrections and Modification of the Records for Appealing."

With respect to Petitioner's Rule 60b motion, the Court did not err in finding that the petition filed in this case is at least Petitioner's second petition for habeas relief. Petitioner previously filed four requests for habeas relief, at least one of which was denied with prejudice by the Honorable Paul D. Borman on February 28, 2001. Pursuant to 28 U.S.C. § 2244(b)(3)(A), a second or successive habeas petition may not be filed in the district court without authorization from the appropriate court of appeals.

With respect to Petitioner's request for release on bail pending consideration of his habeas petition, the Court is without jurisdiction to consider this request as his habeas petition is not before it and the Court never ruled on the petition.¹ Finally, Petitioner requests an order pursuant to Rules 10(a) and (e) of the Federal Rules of Appellate Procedure for the entire district court record and corrections and/or modifications to that record. Petitioner, however, appears to misunderstand the status of his habeas petition.

¹Petitioner cites Rule 23(b) of the Federal Rules of Appellate Procedure to support his request for release. Rule 23(b) provides, in part, that the court rendering the decision not to release a prisoner may order the prisoner released while that decision is under review. FED. R. APP. P. 23(b). This Court, however, has not rendered a decision with respect to Petitioner's request for habeas relief and thus the rule is not applicable under the circumstances of this case.

His habeas petition is not on “appeal” before the Sixth Circuit. Therefore, the Court finds no reason to issue an order pursuant to Rule 10(a) and (e), at this time, for the entire district court record or to require corrections or modifications of that record.

Accordingly,

IT IS ORDERED, that Petitioner’s Motion for Relief from Order Transferring Case to the Court of Appeals is **DENIED**;

IT IS FURTHER ORDERED, that Petitioner’s Application for Release on Bail is **DENIED WITHOUT PREJUDICE**;

IT IS FURTHER ORDERED, that Petitioner’s Notice of Order for Entire Record is **DENIED WITHOUT PREJUDICE**.

PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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